



# NO FEAR ACT NOTICES



## Department of the Navy Notice

### **Department of Navy - Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002**

#### **Department of Navy (DON) Notice**

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," which is now known as the No FEAR Act. One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws." Pub. L. 107 174, Summary. In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." Pub. L. 107-74, Title I, General Provisions, Section 101(1).

The Act also requires that DON inform current employees, former employees and applicants for employment, of the rights and protections available under Federal antidiscrimination, whistleblower protection and retaliation laws.

#### **Antidiscrimination Laws**

A Federal agency may not discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b) (1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e-16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. See, e.g., 29 C.F.R.1614.

If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselors noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 days of the alleged discriminatory action.

If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U. S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

#### **Whistleblower Protection Laws**

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC-11) with the U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036-4505 or online through the OSC Web site—<http://www.osc.gov>.

#### **Retaliation for Engaging in Protected Activity**

A Federal agency may not retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protections laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

#### **Disciplinary Actions**

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee who has engaged in discriminatory or retaliatory conduct, up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

#### **Additional Information**

For further information regarding the No FEAR Act regulations, refer to 5 CFR 724, as well as Human Resources Office servicing your location or on the website <https://www.donhr.navy.mil/NoFearAct.asp>.

Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site—<http://www.eeoc.gov> and the OSC Web site—<http://www.osc.gov>.

#### **Existing Rights Unchanged**

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

## **Prohibited Personnel Practices (section 2302; Title 5, United States Code):**

### **Prohibited Personnel Practices (section 2302; Title 5, United States Code):**

- Any employee who has authority to take, direct others to take, recommend or approve any personnel action, shall not, with respect to such authority:
- Discriminate against an employee or applicant based on race, color, religion, sex, national origin, age, handicapping condition, marital status or political affiliation;
- Solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics (e.g., performance, ability, aptitude, general qualifications, character, loyalty or suitability);
- Coerce the political activity of any person;
- Deceive or willfully obstruct anyone from competing for employment;
- Influence anyone to withdraw from competition for any position to improve or injure employment prospects of any other person;
- Give an unauthorized preference or advantage to anyone so as to improve or injure the employment prospects of any particular employee or applicant;
- Engage in nepotism, i.e., hire, promote or advocate the hiring or promotion of relatives;
- Engage in reprisal for whistle blowing, i.e., take, fail to take-threaten to take or fail to take – a personnel action against the employee or applicant reasonably believes is evidence of a violation of any law or rule; gross mismanagement; a gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety;
- Take, fail to take-threaten to take or fail to take-a personnel action against an employee or applicant for exercising an appeal, complaint or grievance right, testifying for or assisting another in exercising such a right, cooperating with or disclosing information to the special counsel or inspector general or the Special Counsel, or refusing to obey an order that would violate a law;
- Discriminate on the basis of personal conduct which is not adverse to the on-the-job performance of an employee, applicant or others;
- Knowingly take or fail to take, recommended or approve a personnel action if taking or failing to take such an action would violate a veteran's preference requirements; **OR**
- Take or fail to take a personnel action if taking or failing to take action would violate any law, rule or regulation implementing or directly concerning the merit principles codified at 5 U.S.C. 2301.

## **Merit Systems Principles**

### **Merit System Principles (Section 2301, Title 5, United States Code):**

Nine basic principles governing personnel practices or human resources management:

- Recruitment from qualified individuals from appropriate sources to achieve a work force from all segments of society and selection and advancement determined solely on the basis of relative ability, knowledge and skills; after fair and open competition that assures all receive equal opportunity;
- Fair and equitable treatment in all personnel management, without regard to politics, race, color, religion, national origin, sex, marital status, age or disability; and also with proper regard from individual privacy and constitutional rights;
- Provide equal pay for equal work and appropriate incentives and recognition for excellence in performance;
- Maintain high standards of integrity, conduct and concern for the public interest;
- Use the work force efficiently and effectively;
- Retain employees on the basis of adequacy of their performance, inadequate performance should be corrected and employees should be separated who cannot or will not improve their performance to meet required standards;
- Provide employees with effective education and training where such education and training would result in better organizational and individual performance;
- Protect employees from improper political influence;
- Protect employees against reprisal for the lawful disclosure of information in "whistleblower" situations (i.e., protecting people who report things like illegal and/or wasteful activities).

### **To Contact the EEO Office for Your Base:**

**Equal Employment Opportunity (EEO) Office**  
**Commercial (843) 228-2647/4919 or DSN 335-2647/4919**